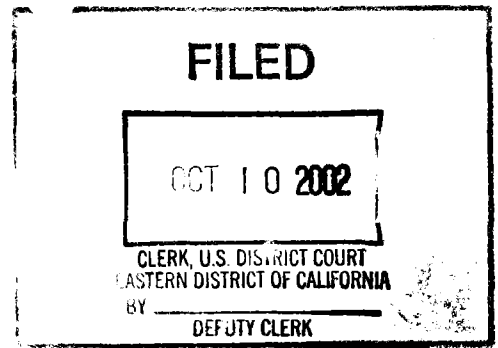


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Attorneys for Plaintiff



**LODGED**

AUG 20 2002

CLERK, U.S. DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 BY                       
 DEPUTY CLERK

THE UNITED STATES DISTRICT COURT FOR THE  
 EASTERN DISTRICT OF CALIFORNIA

ELAINE L. CHAO, Secretary of the United  
 States Department of Labor,

Plaintiff,

v.

WELLS FARGO BANK, N.A., a national  
 banking association, TOMS SIERRA  
 COMPANY, INC., a California Corporation;  
 NICHOLAS TOMS, an individual;  
 KIMBERLEY TOMS, an individual; ROY  
 TOMS, a deceased individual; by and through his  
 successor in interest Doris Toms; DORIS TOMS,  
 an individual; NICOLA MACKLIN, an  
 individual; KEN MACKLIN, an individual;  
 SEAJAY (TOMS) LIEBSCHER, an individual;  
 BRANDON BEAN, an individual;  
 CHRISTOPHER BEAN, an individual, TOMS  
 SIERRA COMPANY, INC. EMPLOYEE

Case No.: CIV. S-01-2211 LKK/PAN

**SETTLEMENT AGREEMENT AND  
 CONSENT DECREE AS TO  
 DEFENDANT WELLS FARGO  
 BANK, N.A. ONLY**

90

1 STOCK OWNERSHIP PLAN, an employee  
benefit plan; and TOMS SIERRA COMPANY,  
2 INC. EMPLOYEE STOCK OWNERSHIP  
TRUST, an employee benefit trust;

3 Defendants,

4  
5 AND RELATED CLAIMS

6 Plaintiff, ELAINE L. CHAO, Secretary of the United States Department of Labor (the  
7 “Secretary”), and defendant WELLS FARGO BANK, N.A. (“Wells Fargo”), have agreed to  
8 settle matters in this civil action and consent to the entry of the following Consent Decree in  
9 accordance herewith:

10 A. The Secretary’s Complaint for Violations of ERISA (“Complaint”) was filed on  
11 December 3, 2001, pursuant to Title I of the Employee Retirement Income Security Act of  
12 1974 (“ERISA”), 29 U.S.C. § 1001 et seq., alleging that Wells Fargo breached its fiduciary  
13 duties under ERISA in its capacity as independent trustee of the Toms Sierra Company, Inc.  
14 Employee Stock Ownership Plan and Toms Sierra Company, Inc. Employee Stock Ownership  
15 Trust (collectively, the “ESOP” or “Plan”) by approving, and causing the ESOP to engage in,  
16 certain transactions resulting in losses to the ESOP in excess of \$10 million.

17 B. This action has been related to that certain action captioned The Hon. Charles B.  
18 Renfrew (Ret.) v. Roy Toms, et al., Civil Action No. CIV-S-99-1941 LKK PAN (the  
19 “Renfrew Case”), which also involves the ESOP. Wells Fargo has been named as a defendant  
20 in the Renfrew Case.

21 C. Wells Fargo neither admits nor denies that it has engaged in any wrongdoing or that  
22 it has any liability for any of the matters alleged in the Complaint. Wells Fargo voluntarily  
23 enters this Settlement Agreement and Consent Decree (“Consent Decree”) solely to resolve  
24 disputed matters, to avoid the expense, inconvenience and distraction of litigation and to put to  
25 rest fully and finally all claims that have been asserted against it herein.

1 D. The Secretary and Wells Fargo have negotiated an agreement to settle all claims  
2 and issues between them arising from the transactions and allegations which are more fully  
3 described in the Complaint. This settlement fully resolves all claims asserted, or that could  
4 have been asserted, by the Secretary against Wells Fargo with respect to Wells Fargo's  
5 actions, conduct and/or omissions as trustee of the ESOP, without regard to whether Wells  
6 Fargo was serving at the time as an independent trustee, discretionary trustee, directed trustee  
7 or otherwise.

8 E. The Secretary and Wells Fargo represent to the Court that this Consent Decree is  
9 the sole and complete memorialization of the agreement negotiated between them with respect  
10 to the settlement of the Secretary's claims against Wells Fargo in connection with the ESOP.

11 F. Pursuant to a separate settlement agreement reached between Wells Fargo and the  
12 ESOP's independent trustee, Hon. Charles B. Renfrew (Ret.), in the related case, Wells Fargo  
13 has agreed to pay to the ESOP \$5,350,000.00 as part of the settlement of plaintiffs' claims in  
14 the Renfrew Case.

15 G. Plaintiffs in the Renfrew Case ("Renfrew Plaintiffs") have filed a motion for a good  
16 faith settlement determination with respect to the settlement agreement between the Renfrew  
17 Plaintiffs and Wells Fargo.

18 H. Upon consideration of the record, and as agreed to by the parties, the Court finds  
19 that it has jurisdiction over the parties and the subject matter of this civil action.

20 I. The Secretary and Wells Fargo expressly waive Findings of Fact and Conclusions of  
21 Law and consent to the entry of this Consent Decree as a full and complete resolution of all of  
22 the Secretary's claims against Wells Fargo with respect to its actions as trustee of the ESOP.

23 J. The undersigned attorneys acknowledge and represent that they are counsel of  
24 record for the parties and are authorized and empowered to execute this Consent Decree on  
25 behalf of their respective clients.

26 Accordingly, it is hereby **ORDERED, ADJUDGED AND DECREED** that:  
27  
28

1           1. The Court has jurisdiction over the parties to this Consent Decree and the subject  
2 matter of this civil action and is empowered to provide the relief herein.

3           2. Upon entry of this Consent Decree by the Court, Wells Fargo shall:

4           a. conduct a self-audit in accordance with the terms of Exh. 1 attached hereto, the  
5 terms of which are incorporated herein by reference; and

6           b. provide periodic reports in accordance with the terms of Exh. 1 attached hereto to  
7 Bette Briggs, Regional Director, U.S. Department of Labor, Pension and Welfare  
8 Benefits Administration, 71 Stevenson Street, Suite 915, San Francisco, California,  
9 94105.

10          3. The settlement agreement between the Secretary and Wells Fargo is expressly  
11 conditioned upon Wells Fargo complying with the terms of the separate settlement agreement  
12 between Wells Fargo and plaintiffs in the Renfrew Case. In the event that Wells Fargo fails to  
13 comply with the terms of the settlement agreement in the Renfrew Case, the settlement  
14 agreement between the Secretary and Wells Fargo shall be null and void and this Consent  
15 Decree shall, upon presentment either by the Secretary or by Wells Fargo, be vacated by the  
16 Court. Under those circumstances, the Secretary will be free to pursue all of the claims  
17 alleged, and seek all relief prayed for, against Wells Fargo in her complaint and Wells Fargo  
18 will be free to raise all defenses and to assert all other claims as allowed under the law.

19          4. Neither the voluntary acceptance by Wells Fargo of the terms of this Consent  
20 Decree nor any of the related settlement negotiations or proceedings between the Secretary  
21 and Wells Fargo is or shall be construed as or deemed to be evidence of an admission by  
22 Wells Fargo of the validity of any of the claims that were or could have been asserted by the  
23 Secretary or of the liability of Wells Fargo.

24          5. Neither this Consent Decree nor any of its terms shall be offered or received in  
25 evidence in this action, or in any other action or proceeding, provided, however, that nothing  
26  
27  
28

1 contained herein shall prevent this Consent Decree from being offered or received in evidence  
2 in any proceeding to enforce or construe this Consent Decree.

3 6. Wells Fargo expressly waives any and all claims of whatsoever nature it has or  
4 believes it may have against the United States Department of Labor, the Secretary, or any of  
5 her officers, agents, employees, or representatives, arising out of or in connection with the  
6 filing, prosecution, and maintenance of this civil action or any other proceeding and  
7 investigation incident thereto through the date of execution of this Consent Decree, including,  
8 but not limited to, claims for costs, fees or other expenses under the Equal Access to Justice  
9 Act as amended.

10 7. Each party to this Consent Decree shall bear its own costs, expenses, and attorneys'  
11 fees incurred in connection with this civil action and all matters relating thereto.

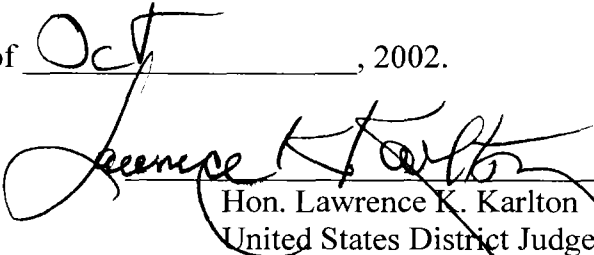
12 8. This Consent Decree represents a full, final and complete judicial resolution of all  
13 claims between the Secretary and Wells Fargo with respect to the subject matter of this civil  
14 action.

15 9. This Consent Decree is not binding upon any agency of the United States  
16 Government other than the United States Department of Labor.

17 10. The Court shall retain such jurisdiction over the parties to this Consent Decree as  
18 may be necessary to enforce its executory provisions.

19 11. The Court, finding that there is no just reason to delay the entry of this Consent  
20 Decree, expressly directs the entry thereof as a final order.

21  
22  
23 SO ORDERED this 8<sup>th</sup> day of Oct, 2002.

24  
25   
26 Hon. Lawrence K. Karlton  
27 United States District Judge  
28

1 The undersigned apply for and consent to the entry of the foregoing Consent Decree.


2  
3 Dated: JUNE 12, 2002

EUGENE SCALIA  
Solicitor of Labor

SUSANNE LEWALD  
Acting Regional Solicitor


THERESA S. GEE  
Counsel for ERISA

MICHAEL SCHLOSS  
Senior Trial Attorney

10  
11 By:   
12 LAWRENCE BREWSTER  
13 Trial Attorney

14  
15 Dated: 12 June 2002

WHITE & CASE LLP

17 By:   
18 Virginia L. Gibson  
19 Attorneys for Defendant  
20 Wells Fargo Bank, N.A.

1 The undersigned apply for and consent to the entry of the foregoing Consent Decree.

2  
3 Dated: \_\_\_\_\_

EUGENE SCALIA  
Solicitor of Labor

4  
5 SUSANNE LEWALD  
Acting Regional Solicitor


6  
7 THERESA S. GEE  
Counsel for ERISA

8  
9 MICHAEL SCHLOSS  
Senior Trial Attorney

10  
11 By: \_\_\_\_\_  
12 LAWRENCE BREWSTER  
Trial Attorney

13  
14  
15 Dated: 12 June 2002

WHITE & CASE LLP

16  
17 By:   
18 Virginia L. Gibson  
19 Attorneys for Defendant  
Wells Fargo Bank, N.A.

## **Wells Fargo Self-Audit**

### **A. DEFINITIONS**

For purposes of this Self-Audit:

1. "WFB" means Wells Fargo Bank, N.A., and its affiliates.
2. "Person" means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.
3. "Fiduciary" means (a) a Person who exercises any discretionary authority or discretionary control respecting management of an ERISA plan or exercises any authority or control respecting management or disposition of its assets or (b) a Person who renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (c) a Person who has any discretionary authority or discretionary responsibility in the administration of such plan. "Fiduciary" does not include a Person who is subject to the directions of a named fiduciary or an investment manager or managers pursuant to ERISA Section 403.
4. "Existing Accounts" means all ERISA accounts in existence as of the date of execution of the Consent Decree in Chao v. Wells Fargo Bank, N.A., et al., Civil Action No. CIV. S-01-2211 LKK PAN (E.D. Calif.) ("Consent Decree") which hold closely-held employer securities and for which WFB served, at any time from January 1, 2000 to and including the date of execution of the Consent Decree, as Fiduciary with respect to the closely-held employer securities.
5. "Audit Period" means the period beginning on January 1, 2000 to and including the date of execution of the Consent Decree.
6. "Former Wells Accounts" means all ERISA accounts which held closely-held employer securities and for which Wells Fargo Bank, N.A. formerly served as Fiduciary with respect to the closely-held employer securities and which (a) originated as accounts directly with Wells Fargo Bank, N.A. and (b) terminated as accounts with Wells Fargo Bank, N.A. during the Audit Period.

### **B. EXISTING ACCOUNTS**

Upon execution of the Consent Decree WFB agrees as follows:



1. Special Accounts Team

- WFB will establish a Special Accounts Team, which will be led by the Director of Risk Management and Compliance for Retirement Plan Services, who reports to the Executive Vice President of the Institutional Trust Group.
- Within 30 days after the execution of the Consent Decree, the Special Accounts Team, utilizing written audit procedures, will begin to audit all Existing Accounts for the Audit Period to determine whether required valuations have been adequately performed and are current and whether the governing trust documents and any leveraged transaction documentation are adequate.
- The Special Accounts Team will work with the named fiduciaries/plan sponsors of the Existing Accounts to address and correct any deficiencies found with regard to the valuation and/or documentation of the Existing Accounts.
- The Special Accounts Team will develop policies, procedures and controls with respect to the Existing Accounts, including requirements and criteria for all valuations for the Existing Accounts, and will provide all such policies, procedures and controls to DOL.
- WFB will provide ongoing training and continuing education to members of the Special Accounts Team in the areas of general trust management, policies and procedures, documentation, account review, valuation standards, and requirements under ERISA and other applicable laws.
- The Special Accounts Team will assume responsibility for the ongoing administration of all Existing Accounts.

2. Quarterly Reports

- Within 60 days of the date on which the audit is initiated, the Executive Vice President of the Institutional Trust Group will provide the DOL with a report on the Special Account Team's specific findings and progress to date. This initial report ("First Quarterly Report") will identify each of the Existing Accounts audited to date by the Special Accounts Team and each account not yet audited by providing each such account's name, EIN and CUSIP number (if any). The First Quarterly Report will set forth the date each Plan became a client of WFB, current value of Plan assets, current value of any closely-held employer securities, any customer complaints received concerning each of the Existing Accounts audited to date and any outstanding litigation involving any of those Existing Accounts. The Special Accounts Team will also identify whether an Existing Account client is, or has been at any time beginning on January 1, 1998, involved in any corporate restructuring, recapitalization, leveraging of the ERISA plan, acquisition or disposition of closely-held

employer securities, or any event typically requiring “pass-through voting” either under the terms of the plan’s governing documents or the Internal Revenue Code. The First Quarterly Report will also provide a description of the nature of any issue identified by the Special Accounts Team in the administration of the Existing Accounts and a summary of the steps taken and a timetable for any additional steps planned to address such issues as of the date of the report.

- Every three months thereafter, the Executive Vice President of the Institutional Trust Group will report in writing to the DOL concerning any updates to prior reports and concerning any additional Existing Accounts that have been reviewed by the Special Account Team over the prior three months. With respect to any such additional Existing Accounts, these periodic reports (“Subsequent Quarterly Reports”) will provide the same kind of information as is described above with respect to the First Quarterly Report. WFB will continue to provide Subsequent Quarterly Reports until the issues identified in the Existing Accounts have been addressed and/or there are no further measures that may be taken by WFB.

#### C. FORMER DIRECT WELLS FARGO BANK ACCOUNTS

In addition to the provisions for Existing Accounts described above, the Special Accounts Team will review the files of Former Wells Accounts. In the First Quarterly Report, the Executive Vice President of the Institutional Trust Group will include a report on the Former Wells Accounts, including the identity of Former Wells Accounts, date of termination, the reasons given by the Former Wells Accounts for termination of Wells Fargo Bank, N.A.’s services as Fiduciary, and whether any Former Wells Account is, or has been at any time beginning on January 1, 2000, involved in any corporate restructuring, recapitalization, leveraging of the ERISA plan, acquisition or disposition of closely-held employer securities, or any event typically requiring “pass-through voting” either under the terms of the plan’s governing documents or the Internal Revenue Code.

#### D. DOL ACCESS TO DOCUMENTS

Upon issuance of an administrative subpoena, WFB will make available to the DOL all of the materials and documents upon which the Special Accounts Team relied in reaching its findings about the Existing Accounts and/or about the Former Wells Accounts. WFB understands that the DOL intends to issue subpoenas to secure the underlying documents on some or all of the Existing Accounts and Former Wells Accounts identified in the Quarterly Reports.

#### E. TREATMENT OF QUARTERLY REPORTS

- Because the First Quarterly Report and Subsequent Quarterly Reports (“Reports”) will contain sensitive and confidential information concerning both WFB and the Existing Accounts, WFB will mark the Reports “Confidential Pursuant to Consent Decree.” If the DOL receives a request for

production, either under the Freedom of Information Act or arising from any litigation, which would compel the disclosure of the Reports, the DOL will not disclose the Reports or their contents without first notifying WFB and providing WFB an opportunity to undertake any action it deems appropriate. The DOL will not disclose the Reports or their contents to any third party except as required pursuant to the Freedom of Information Act or subpoena (after notice to WFB as provided herein) or except as provided below.

- The Reports are for the purpose of informing the DOL of WFB's progress in responding to issues identified, if any, in the Existing Accounts and their contents shall not be construed as or deemed to be evidence of an admission by WFB. The Reports shall not be offered or used in evidence by the DOL or WFB in any proceeding other than in an action or proceeding to enforce this Consent Decree and/or to demonstrate compliance with the Consent Decree.
- If WFB takes all reasonable and timely steps to address issues, if any, in the Existing Accounts, the DOL will not take any enforcement action against WFB other than the issuance and enforcement of administrative subpoenas as contemplated in Section D, without first providing WFB, in writing, notice of the DOL's concerns and the DOL's intended enforcement action and without giving WFB a reasonable time to respond to the concerns.

CERTIFICATE OF SERVICE

I am a citizen of the United States of America and am over eighteen years of age. I am not a party to the within action; my business address is 71 Stevenson Street, Suite 1110, San Francisco, California 94105-2999. On August 19, 2002, I served the within

**SETTLEMENT AGREEMENT AND CONSENT DECREE AS TO  
DEFENDANT WELLS FARGO BANK, N.A. ONLY**

by placing a true copy thereof in a sealed government envelope with postage thereon, mailed in San Francisco, addressed to:

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Renfrew in his capacity as independent  
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Employee Stock Ownership Plan

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Employee Stock Ownership Plan.

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in related case  
Renfrew v. Roy Toms, et al., Civ.  
S-99-1941 LKK PAN)

9 I certify that under penalty of perjury that the above is true and correct. Executed on August 19,  
10 2002.

11  
12   
13 KRISHNA M. TINDALL  
14 Legal Technician

15 OFFICE OF THE SOLICITOR  
16 UNITED STATES DEPARTMENT OF LABOR  
17  
18  
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23  
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United States District Court  
for the  
Eastern District of California  
October 10, 2002

\* \* CERTIFICATE OF SERVICE \* \*

2:01-cv-02211

Chao

v.

Wells Fargo Bank NA

---

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on October 10, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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Jack L. Wagner, Clerk

BY:   
Deputy Clerk